

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

COMPLAINT NO. R2-2003-0100

**MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
CONTRA COSTA COUNTY SANITARY DISTRICT NO. 5
PORT COSTA WASTE WATER TREATMENT PLANT
CONTRA COSTA COUNTY**

Pursuant to California Water Code Section 13385, this Complaint is issued to Contra Costa County Sanitary District No. 5, the Port Costa Waste Water Treatment Plant (the Discharger) to assess mandatory minimum penalties (MMP), based on a finding of the Discharger's violations of the Waste Discharge Requirements contained in Order Nos. 95-127 and R2-2003-009 (NPDES No. CA0037885).

The Executive Officer finds the following:

1. On June 21, 1995, the Regional Water Quality Control Board, San Francisco Bay Region (the Water Board) adopted Order No. 95-127 for the Discharger, to regulate discharges of waste from this treatment plant.
2. On February 1, 2003, the Water Board adopted Order No. R2-2003-009 for the Discharger, to regulate discharges of waste from this treatment plant. Order No. 95-127 was rescinded at that time.
3. Water Code Section 13385(h)(1) requires the Water Board to assess an MMP of three thousand dollars (\$3,000) for each serious violation.
4. Water Code Section 13385(h)(2) defines a "serious violation" as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20% or more, or any waste discharge of a Group I pollutant that exceeds the effluent limitation by 40% or more.
5. Water Code Section 13385(i) requires the Water Board to assess an MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six consecutive months:
 - A. Violates a waste discharge requirement effluent limitation.
 - B. Fails to file a report pursuant to Section 13260
 - C. Files an incomplete report pursuant to Section 13260.
 - D. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
6. Effluent Limitations: Orders No. 95-127 and R2-2003-0009 include the following applicable effluent limitations:

EFFLUENT LIMITATIONS

Effluent discharge shall not exceed the following limits:

Chlorine Residual: 0.0 mg/l

3-sample median Acute toxicity: 90% survival

Daily maximum total coliform limit: 10,000 MPN/100ml

5-day median total coliform limit: 240 MPN/100ml

7. Summary of Effluent Limitation Violations:

Between January 29, 2001 and June 9, 2003, the Discharger had 23 violations of its effluent limitations. These violations are: four chlorine residual violations, one 3-sample median acute toxicity violation, seven daily maximum total coliform violations, and eleven 5-day median total coliform violations. The details of these limit violations are summarized in the attached Table 1.

8. Total Chlorine Residual is a Group II pollutant

The four chlorine residual violations are serious violations, as total chlorine residual is a Group II pollutant and the reported violations exceeded the effluent limitation by more than 20%. Each serious violation is subject to a \$3000 MMP under Section 13385(h)(1), for a total penalty of \$12,000 for the two violations.

9. Acute Toxicity is a Group II pollutant

The single acute toxicity violation is not subject to an MMP nor is it used to determine MMP for other effluent limit violations.

10. Total Coliform is neither a Group I nor a Group II Pollutant

The seven daily maximum total coliform violations, and eleven 5-day median total coliform violations are non-serious violations. Because 15 of these violations are the fourth or more violations in a six-month period, 15 are subject to a \$3,000 MMP for each violation. The total MMP amount for these non-serious violations is \$45,000.

11. Water Code Exception

Water Code Section 13385(j) provides for some exceptions related to the assessment of an MMP for effluent limit violations. None of the exceptions apply to the violations cited in this Complaint.

12. MMP Assessment

Nineteen of the twenty-three violations are subject to an MMP, as detailed in Table 1. The total MMP amount is \$57,000.

13. Compliance Project

In lieu of assessing all or a portion of the MMP, Water Code Section 13385(k) allows the Water Board to require the discharger to spend an equivalent amount towards the completion of a compliance project proposed by the

discharger. This option is available only for a publicly owned sewage treatment plant serving a "small community."

14. Small Community

Water Code Section 79084 defines a "small community" as one with a population of 10,000 or less, with a financial hardship as determined by the State Water Resources Control Board. Financial hardship means that the median annual household income for the community is less than 80% of the California median annual household income, as determined by the most recent census data. While Port Costa has population much less than 10,000, the 2000 census showed that the median family income for Port Costa exceeded the State average. Thus the discharger is not eligible for the small community alternative to an MMP.

15. Suspended MMP Amounts

Water Code Section 13385(l) allows the Water Board, with the concurrence of the discharger, to direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. If the penalty amount exceeds \$15,000, the maximum penalty amount that may be expended on a SEP may not exceed \$15,000 plus 50% of the penalty amount that exceeds \$15,000. Thus, \$36,000 of the \$57,000 penalty in this complaint is eligible for SEP substitution. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

16. SEP Categories

If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:

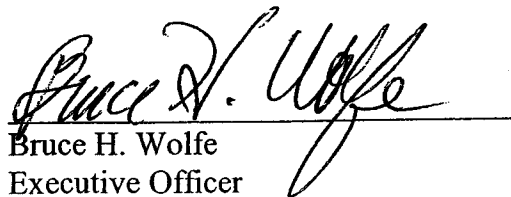
1. Pollution prevention;
2. Pollution reduction;
3. Environmental clean-up or restoration; or
4. Environmental education.

CONTRA COSTA COUNTY SANITARY DISTRICT NO. 5 IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the total amount of \$57,000.
2. The Water Board will hold a hearing on this Complaint on April 21, 2004, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and checks the appropriate box. By doing so, the Discharger agrees to:
 - a. Pay the full penalty of \$57,000 within 30 days after the signed waiver becomes effective, or
 - b. Propose an SEP in an amount up to \$36,000. Pay the balance of the penalty within 30 days after the signed waiver becomes effective. The

sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$57,000.

3. If the Discharger chooses to propose a SEP, it must submit a preliminary proposal by 5:00 P.M., March 21, 2004 to the Executive Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002 and the attached Standard Criteria and Reporting Requirements for Supplemental Environmental Projects. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or to make a payment for the suspended penalty of \$36,000. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
4. The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
5. If a hearing is held, the Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability, or refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.


Bruce H. Wolfe
Executive Officer

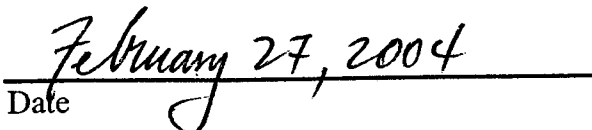

Date

Table 1 – Violations

Attachment A – Standard Criteria and Reporting Requirements for Supplemental Environmental Projects

WAIVER

(The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

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Waiver of the right to a hearing and agree to make payment in full.

By checking this box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0100 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o the State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.

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Waiver of the right to a hearing and agree to make payment and complete a SEP.

By checking this box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0100 and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$36,000. I also agree to remit payment of the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the signed waiver becomes effective. I understand that the SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002 and the attached Standard Criteria and Reporting Requirements for Supplemental Environmental Projects, and be subject to the approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the SEP within 30 days of a letter from the Executive Officer denying the approval of the proposed SEP. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand that failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)

Signature

Date

Title/Organization

VIOLATIONS - TABLE 1

Item #	Date of Violation	Effluent Limitation Description	Effluent Limit	Reported Value	Type of Violation	Penalty Amount
					Serious	
1	1/29/01	Daily max total coliform	10,000 MPN	16,000 MPN	No (1 st viol. in 6 months)	-
2	2/5/01	Daily max total coliform	10,000 MPN	16,000 MPN	No (2nd viol. in 6 months)	-
3	3/7/01	Daily max total coliform	10,000 MPN	16,000 MPN	No (3rd viol. in 6 months)	-
4	5/25/01	Daily max total coliform	10,000 MPN	16,000 MPN	No (4th viol. in 6 months)	\$3,000
5	5/30/01	Daily max total coliform	10,000 MPN	16,000 MPN	No (4 th or more viol. in 6 months)	\$3,000
6	6/4/01	5-day median total coliform	240 MPN	500 MPN	No (4 th or more viol. in 6 months)	\$3,000
7	6/15/01	5-day median total coliform	240 MPN	500 MPN	No (4 th or more viol. in 6 months)	\$3,000
8	6/22/01	5-day median total coliform	240 MPN	500 MPN	No (4 th or more viol. in 6 months)	\$3,000
9	9/7/01	5-day median total coliform	240 MPN	300 MPN	No (4 th or more viol. in 6 months)	\$3,000
10	9/10/01	5-day median total coliform	240 MPN	1600 MPN	No (4 th or more viol. in 6 months)	\$3,000
11	9/21/01	5-day median total coliform	240 MPN	1600 MPN	No (4 th or more viol. in 6 months)	\$3,000
12	9/21/01	Daily max total coliform	10000 MPN	16,000 MPN	No (4 th or more viol. in 6 months)	\$3,000

Item #	Date of Violation	Effluent Limitation Description	Effluent Limit	Reported Value	Type of Violation	Penalty Amount
13	9/28/01	5-day median total coliform	240 MPN	1600 MPN	No (4 th or more viol. in 6 months)	\$3,000
14	9/28/01	Daily max total coliform	10000 MPN	16000 MPN	No (4 th or more viol. in 6 months)	\$3,000
15	10/8/01	5-day median total coliform	240 MPN	1600 MPN	No (4 th or more viol. in 6 months)	\$3,000
16	10/18/01	5-day median total coliform	240 MPN	1600 MPN	No (4 th or more viol. in 6 months)	\$3,000
17	12/5/01	5-day median total coliform	240 MPN	500 MPN	No (4 th or more viol. in 6 months)	\$3,000
18	12/10/01	5-day median total coliform	240 MPN	500 MPN	No (4 th or more viol. in 6 months)	\$3,000
19	12/26/01	Chlorine residual	0.0 mg/l	0.19 mg/l	Yes	\$3,000
20	1/1/02	Chlorine residual	0.0 mg/l	0.2 mg/l	Yes	\$3,000
21	3/18/03	3-sample median acute toxicity	90% survival	85% survival	No	-
22	4/30/03	Chlorine residual	0.0 mg/l	1.0 mg/l	Yes	\$3,000
23	6/9/03	Chlorine residual	0.0 mg/l	2.6 mg/l	Yes	\$3,000

Total Penalty \$57,000

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
JANUARY 2004

STANDARD CRITERIA AND REPORTING REQUIREMENT
FOR
SUPPLEMENTAL ENVIRONMENTAL PROJECT

BASIS AND PURPOSE

The San Francisco Bay Regional Water Quality Control Board (Water Board) accepts and encourages Supplemental Environmental Projects (SEP) in lieu of a portion of the ACL imposed on Dischargers in the Bay Area.

The Water Board does not select projects for SEP; rather, the Discharger identifies a project it would like to fund and then obtains approval from the Water Board's Executive Officer. The Water Board facilitates the process by maintaining a list of possible projects, which is made available to Dischargers interested in pursuing the SEP option. This list is available on the Water Board web site:

<http://www.swrcb.ca.gov/rwqcb2/>

Dischargers are not required to select a project from this list. Dischargers may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

GENERAL SEP QUALIFICATION CRITERIA

All SEPs approved by the Water Board must satisfy the following general criteria:

- (a) An SEP shall only consist of measures that go above and beyond all legal obligations of the Discharger (including those from other agencies). For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (b) The SEP should benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. SEPs in the following categories have received approval from the Water Board's Executive Officer:
 - Pollution prevention. These are projects designed to reduce the amount of pollutants being discharged to either sewer systems or to storm drains. Examples include improved industrial processes that reduce production of pollutants or improved spill prevention programs.
 - Pollution reduction. These are projects that reduce the amounts of pollution being discharged to the environment from treatment facilities. An example is a program to recycle treated wastewaters.
 - Environmental restoration. These projects either restore or create natural environments. Typical examples are wetland restoration or planting of stream bank vegetation.
 - Environmental education. These projects involve funding environmental education programs in schools (or for teachers) or for the general public.

Further, an SEP should be located near the Discharger, in the same local watershed, unless the project is of region-wide importance.

APPROVAL PROCESS

The following information shall be submitted to the Executive Officer for approval of an SEP:

1. Name of the organization and contact person, with phone number.
2. Name and location of the project, including watershed (creek, river, bay) where it is located.
3. A detailed description of the proposed project, including proposed activities, time schedules, success criteria, other parties involved, monitoring program where applicable, and any other pertinent information.
4. General cost of the project.
5. Outline milestones and expected completion date.

Generally SEP proposals are submitted along with waivers of hearings. In such a case the approval of a proposal will not become effective until the waiver goes into effect, i.e. at the close of the public comment period. There will not be a public hearing on the SEP proposal unless new and significant information becomes available after the close of the public comment period that could not have been presented during the comment period.

If the Discharger needs additional time to prepare an SEP it may waive its right to a hearing within 30 days of the issuance of a Complaint (and retain its right to a hearing to contest the Complaint at a later date), and request additional time to prepare an SEP proposal. Any such time extension needs to be approved by Water Board staff.

REPORTING REQUIREMENT

On January 15 and July 15 of each year, progress reports shall be filed for the SEPs with expected completion date beyond 240 days after the issuance of the corresponding complaint.

FINAL NOTIFICATION

No later than 60 days after completion of the approved SEP, a final notification shall be filed. The final notification shall include the following information:

- Outline completed tasks and goals;
- Summary of all expenses with proof of payment; and
- Overall evaluation of the SEP.

THIRD PARTY PROJECT OVERSIGHT

For SEPs of more than \$10,000 the Water Board requires there to be third party oversight of the project. The Water Board has made arrangements with the Association of Bay Area Governments (ABAG) to provide this oversight, or a Discharger may choose an alternative third party acceptable to the Executive Officer. If ABAG is chosen, six per cent of the SEP funds shall be directed to ABAG for oversight services (the remaining 94% of funds go directly to the SEP). If an alternative third party is chosen, the amount of funds directed to the SEP, as opposed to oversight, shall not be less than 94% of the total SEP funding. For projects greater than \$10,000 the Discharger shall indicate when submitting the information required under C. above whether ABAG or an alternative third party oversight entity will be used.